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Renato Belz

21933-US

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7590

08/20/2008

Roche Molecular Systems, Inc.
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EXAMINER

REDDING, DAVID A

ART UNIT

PAPER NUMBER

3723

MAIL DATE

DELIVERY MODE

08/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,720,406 (Fassbind et al.) in view of USP 6,776,964 ('964) and USP 4,226,333 (Percarpio).

The "406 patent discloses a plurality of reaction containers (91) with corresponding plurality of closures (95) which is placed into a device for performing thermal cycling (see description of figure 1 and col.1, lines 20-23). Figure 1 shows a ring of reaction containers (91) and a ring of closures (95), each of which are two-dimensional (X and Y axis). The reaction vessels are connected to one another via a flexible connector (94) and the closures connected to an adjacent closure via a flexible connector (96) (col.3, lines 59-61; col.4, lines 1-5). The connectors (96) do not extend in a direct line between the containers but extend transversely to the connecting line between the closure. The patent also discloses that the device is equipped with a handle (99,102) which has a surface upon which a bar code label can be placed (col.4, lines 10-11). Further, the apex of the connector (96) is considered to read on the limitations of claim 3.

In Fassbind et al. the closures have rounded tops, not recesses. The "964 patent shows a closure assembly comprising caps which do have cylindrical recesses (figure 4). Accordingly, it would have been obvious to one skilled in the art to provide the

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closures in Fassbind et al. with recesses as shown in the '964 patent as a matter of choice of design.

The Fassbind et al. and '964 patents are silent as to providing a tool with having a handle with pin for insertion into the recess of the cap for seating the cap. Figures 2 and 3 in the Percarpio patent shows the use of a tool (34) as claimed for the same function as claimed (see col. 4, lines 40-56). Accordingly, it would have been obvious to one skilled in the art to provide the tool (34) in Percarpio with the closure in the '964 patent with the containers in Fassbind et al. in view of the tools known use.

Response to Arguments

The arguments are addressed in the order in which they appear in applicant's response filed 4/30/08.

Applicant argues that Fassbind does not teach or suggest a flexible connecting member having a cross part which extends transversely to the closure elements.

The examiner disagrees with this argument. Figure 1 in Fassbind shows that the closures are connected to one another via a flexible element which is not a direct connection but does extend transversely between the closures. Each of these elements are constructed to allow the distances between the vessels and closures to change (col.3, lines 59-61; col.4, lines 1-5).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /David A. Redding/ whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/David A Redding/
Primary Examiner
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DAR